IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]
Description of case

Habeas Corpus W.P. No. 13 of 2005 **Decided on: June 20, 2006**

With

Hebeas Corpus W.P. No. 14 of 2005

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date 20.06.2006

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judges for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Hebeas Corpus Writ Petition No. 13 of 2005

Umesh Maheshwari @ Umesh Pahalwan
S/o Sh. Vishva Nath,
R/o Mohalla Oajhaan,
P.S. Kashipur, Distt. Udham Singh Nagar,
Through his representative Pankaj Maheshwari
S/o Sh. Ram Avtar Maheshwari,
R/o Mohalla Oajhaan, Kashipur,
District Udham Singh Nagar.

..... Petitioner

Versus

1. State of Uttaranchal
   Through Secretary Home,
   Dehradun, Uttaranchal.
2. The District Magistrate,
   Udham Singh Nagar.
3. Senior Superintendent of Police,
   Udham Singh Nagar.
4. Superintendent, District Jail,
   Nainital.
5. Union of India
   Through Principal Secretary Home,
   New Delhi.

..... Respondents

WITH

Hebeas Corpus Writ Petition No. 14 of 2005

Gurumukh Singh @ Gorkha
S/o Sri Banta Singh,
R/o Punjabi Colony,
Kasba and P.S. Kashipur,
District Udham Singh Nagar
Through its representative,
Sri Gurnam Singh S/o Sri Banta Singh
R/o Kasba – Punjabi Colony,
P.S. Kashipur, Distt. Udham Singh Nagar.

..... Petitioner

Versus

1. State of Uttaranchal
   Through Secretary Home,
   Dehradun, Uttaranchal.
2. The District Magistrate,
   Udham Singh Nagar.
3. Senior Superintendent of Police,
   Udham Singh Nagar.
4. Superintendent, District Jail,
   Nainital.
5. Union of India
   Through Principal Secretary Home,
   New Delhi.

..... Respondents

Mr. S.K. Aggarwal, Senior Advocate assisted by Mr. Gopal K. Verma, Advocate for the petitioners.
Mr. D.K. Sharma, Govt. Advocate with Mr. H.C. Pande, A.G.A. for the State.
Mr. Vinod Sharma, Standing Counsel for respondent - Union of India.

Coram : **Hon'ble Rajeev Gupta, C.J.**
Hon'ble Prafulla C. Pant, J.

Dt: June 20, 2006.

[Per Hon'ble Prafulla C. Pant, J.]

These two Habeas Corpus petitions have been moved by the petitioners challenging the detention order dated 21st of July, 2005 (Annexure No. 2 to the writ petitions), passed under Section 03 of the National Security Act, 1980, by the District Magistrate, Udham Singh Nagar.

2) We heard learned counsel for the parties and perused the record.

3) Brief facts, as narrated in the writ petition No. 13 of 2005, filed on behalf of petitioner Umesh Maheshwari, are

that the petitioner Umesh Maheshwari @ Umesh Pahalwan is a named accused in crime No. 1565 of 2005 under Section 302/34 of the Indian Penal Code, 1860 (for brevity hereinafter the I.P.C.), registered with Police Station Kashipur, District Udham Singh Nagar. He is in jail in connection with said crime. The role assigned in the First Information Report (for brevity hereinafter F.I.R.) to this petitioner is of exhortation to another accused in the murder of one Manoj Chaudhary, Vice Chairman of Nagar Palika Parishad, Kashipur. It is alleged in this petition that the deceased Manoj Chaudhary himself was a man of a shady character and was involved in several heinous crimes. A copy of said F.I.R. is Annexure No. 1 to the writ petition. When the petitioner was taken into custody in connection with above crime, he was served with the impugned detention order, on 27.07.2005 through the Superintendent, District Jail, Nainital. The impugned order passed under the National Security Act (Act No. 65 of 1980) is Annexure No. 2 to this writ petition. It appears that on 21.07.2005, the detention order was sent to the Government, for its approval. The proposal for the detention of the petitioner Umesh Maheshwari @ Umesh Pahalwan under aforesaid Act No. 65 of 1980 was moved on 14.07.2005 by the Investigation Officer of aforesaid crime alleging that the petitioner is a daredevil and hardened criminal. It was further alleged in said proposal that the petitioner with his associates has committed several offences of murder, attempt to murder, dacoity and robbery. It is also alleged by the Police that due to the criminal activities of the petitioner the public order is adversely affected in the area

of police station Kashipur. It is alleged in the writ petition that the petitioner has been granted bail on 07.09.2005 in the aforesaid crime No. 1565 of 2005. The proposal of the Investigating Officer was approved by the Additional Superintendent of Police and Senior Superintendent of Police, Udham Singh Nagar and the matter was forwarded to the District Magistrate, Udham Singh Nagar recommending to pass necessary orders under the National Security Act, 1980. Consequently, impugned detention order was passed and served on 22.07.2005 on the petitioner asking him that he may make representation against the detention order. A representation (copy of which is Annexure No. 8 the this writ petition) addressed to the Government, was made by the petition Umesh Maheshwari @ Umesh Pahalwan. In his representation, the petitioner has alleged that the petitioner has been falsely implicated in number of false cases, time and again, by the police in connivance with one person or the other. It is also alleged by him that he has never been indulged in any activities which caused fear and terror amongst the citizens of the area and had caused public disorder in any manner. It is also alleged in the representation that the District Magistrate has not applied his mind and without any rhyme and reason wrongly implicated him under Nation Security Act, 1980. It is further alleged that the petitioner was falsely implicated due to enmity in the murder of Manoj Chaudhary and the whole story regarding his involvement in the said crime is baseless and based on wrong facts. Lastly, it was also stated in the representation that the petitioner is a peace loving person and well aware of his

responsibilities towards the society. The petitioner Umesh Maheshwari @ Umesh Pahalwan was elected as member of Municipal Board by the people and he was also President of Traders' Association. The petitioner himself is a businessman.

4) Brief facts in the connected writ petition No. 14 of 2005, filed on behalf of petitioner Gurumukh Singh, are that the petitioner Gurumukh Singh @ Gorkha is a named accused in crime No. 1565 of 2005 under Section 302 /34 of the I.P.C., registered with Police Station Kashipur, District Udham Singh Nagar. He is in jail in connection with said crime. The role assigned in the F.I.R. to this petitioner is a shooter in the murder of one Manoj Chaudhary, Vice Chairman of Nagar Palika Parishad, Kashipur. It is alleged in this petition that the deceased Manoj Chaudhary himself was a man of a shady character and was involved in several heinous crimes. A copy of said F.I.R. in Annexure No. 1 to the writ petition. When the petitioner was taken into custody in connection with above crime, he was served with the impugned detention order on 22.07.2005 through the Superintendent, District Jail, Nainital. The impugned order passed under the National Security Act (Act No. 65 of 1980) is Annexure No. 2 to this writ petition. It appears that on 21.07.2005, the detention order was sent to the Government, for its approval. The proposal for the detention of the petitioner Gurumukh Singh @ Gorkha under aforesaid Act No. 65 of 1980 was moved on 14.07.2005 by the Investigation Officer of aforesaid crime alleging that the petitioner is a daredevil and hardened criminal. It is further alleged that the

petitioner with his associates had committed several offences of murder, attempt to murder, dacoity and robbery. It is also alleged by the Police that due to the criminal activities of the petitioner the public order is adversely affected in the area of police station Kashipur. It is alleged in the writ petition that the petitioner has been granted bail on 07.09.2005 in the aforesaid crime. The proposal of the Investigating Officer was approved by the Additional Superintendent of Police and Senior Superintendent of Police, Udham Singh Nagar and the matter was forwarded to the District Magistrate, Udham Singh Nagar recommending to pass necessary orders under the National Security act, 1980. Consequently, impugned detention order was passed and served on 22.07.2005 on the petitioner Gurumukh Singh @ Gorkha asking him that he may make representation against the detention order. A representation (copy of which is Annexure No. 8 to this writ petition) addressed to the Government, was made by the petitioner. In his representation, the petitioner Gurumukh Singh @ Gorkha has alleged that the petitioner has been falsely implicated in number of false cases, time and again, by the police in connivance with one person or the other. It is also alleged by him that he has never been indulged in any activities which caused fear and terror amongst the citizens of the area and had caused public disorder in any manner. It is also alleged in the representation that the District Magistrate has not applied his mind and without any rhyme and reason wrongly implicated him under National Security Act, 1980. It is further alleged that the petitioner was falsely implicated

due to enmity in the murder of Manoj Chaudhary and the whole story regarding his involvement in the said crime is baseless and based on wrong facts. It is stated in the representation that the petitioner Gurumukh Singh @ Gorkha is a peace loving person and well aware of his responsibilities towards the society. Lastly, it is stated that the petitioner himself is a businessman.

5) In the counter affidavit filed by respondent No. 2 in the Habeas Corpus Writ Petition No. 13 of 2005, it is admitted that the petitioner Umesh Maheshwari @ Umesh Pahalwan had been the Vice Chariman of the Nagar Palika Parishad, Kashipur for two years and thereafter Manoj Chaudhary (deceased) succeeded him for the said post till his death. It is also submitted that the above petitioner and the deceased were on inimical terms due to the said post of Vice Chairman. In reply to the contents of para 2 of the Habeas Corpus Writ Petition No. 14 of 2005, filed on behalf of petitioner Gurumukh Singh @ Gorkha it has been stated in the separate counter affidavit by respondent No. 2 that Gurumukh Singh @ Gorkha has been named in the F.I.R. and specific role of firing on the deceased is assigned to him. In both the counter affidavits, in reply to the contents of para 10 of the writ petitions, it is stated by the answering respondent that the petitioners namely Umesh Maheshwari @ Umesh Pahalwan and Gurumukh Singh @ Gorkha both were harecore criminals and as such due to their terror no person from the public could dare to speak against them and both of them were earlier acquitted by the trial courts mostly on the ground that the prosecution witnesses turned hostile. It is further stated in the counter

affidavits filed by respondent No. 2 that representations of the petitioners which were addressed to the Government of Uttaranchal and Government of India were sent on 04.08.2005 with parawise comments thereon. It is further stated in the counter affidavits that the representations of the petitioners were rejected by the Government of Uttaranchal.

6) Before further discussion, it is pertinent to mention here the grounds on which the impugned detention orders (Annexure No. 2 to the writ petitions) were passed against the petitioners. Annexure No. 2 to the Hebeas Corpus Writ Petition No. 13 of 2005, reads as under:

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i= la0 240@20&U;k; lgk @2005 fnukd 21 tqykbZ 2005

vkn'k

pfd tuin m/keflag uxj dh ftyk eftLVªV dh :Ik esa ejk lek/kku gks x;k g fd Jh me'k ekgs'ojh mQZ me'k igyoku iq= Jh fo'oukFk ekgs'ojh me 40 o"kZ fuoklh ekgYyk vk>ku dLck Fkkuk dk'khiqj ftyk m/keflag uxj dk fdlh ,slh jfr esa dk;Zokgh djus ls jkdus gsrq tks fd ykd 0;oLFkk dh vuqj{k.k esa ifrdwy gks ,slk vkn'k nsuk vko';d gSA

vr% jk"Vªh; lqj{kk vf/kfu;e 1980 ¼vf/k0 la0 65½ dh /kkjk 3¼3½ ds }kjk iznRr vf/kdkjksa dk iz;ksx djrs gq,] esa ;g funsZ'k nsrk gwa fd vfHk;qDr me'k ekgs'ojh mQZ me'k igyoku dh mDr vf/k0 dh /kkjk 3¼3½ ds vk/khu lk/kkj.k cUnh dh :i esa ftyk dkjkxkj ukuhrky esa fu:) j[ksA

vkt fnukd 20&7&2005 dks ejs gLrk{kj ,oa eqgj lsa tkjh fd;k x;kA"

Sd/-
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Annexure No. 2 to the Habeas Corpus Writ Petition No. 14 of 2005, reads as under:

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i= la0 241 @20&U;k; lgk0 @2005 fnukad 21 tqykbZ 2005

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pfd tuin m/keflag uxj dh ftyk eftLVªV dh :Ik esa ejk lek/kku gks x;k gS fd Jh xjesk[k flag mQZ xkj[kk iq= Jh cUrk flag fuoklh iVkch dkyksuh dLck Fkkuk dk'khiqj ftyk Å/keflag uxj dk fdlh ,slh jhfr esa dk;Zokgh djus ls jksdus gsrq tks fd ykd 0;oLFkk dh vuqj{k.k esa ifrdwy gks ,slk vkns'k nsuk vko';d gSA

vr% jk"Vªh; lqj{kk vf/kfu;e 1980 ¼vf/k0 la0 65½ dh /kkjk 3¼3½ dh }kjk iznRr vf/kdkjksa dk iz;ksx djrs gq,] esa ;g funsZ'k nsrk gwa fd vfHk;qDr Jh xjesk[k flag mQZ xkj[kk dks mDr vf/k0 dh /kkjk 3¼2½ dh v/khu lk/kkj.k cUnh dh :i esa ftyk dkjkxkj uSuhrky esa fu:) j[kwaA

vkt fnukad 20&7&2005 dks ejs gLrk{kj ,oa eqgjZ ls tkjh fd;k x;kA"

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7) The aforementioned orders are accompanied with the grounds mentioned in the letters dated 21.07.2005 sent by District Magistrate (respondent No. 2) to the Secretary (Home), Government of Uttaranchal, which are Annexure No.3 to the writ petitions. Annexure No. 3 to the Habeas Corpus Writ Petition No. 13 of 2005 shows that petitioner Umesh Maheshwari @ Umesh Pahalwan is a hardened criminal who is involved in murders, dacoity and other heinous crimes. His activities has caused fear and terror in the public of Kashipur. Mentioning the crime No. 1565 of

2005, it is alleged that on 05.05.2005 in broad day light, at about 12:30 P.M., petitioner Umesh Maheshwari @ Umesh Pahalwan with his associate Gurumukh Singh @ Gorkha Committed murder of Manoj Chaudhary, Vice Chairman of Nagar Palika Parishad, Kashipur, due to which there was terror in the public and the panic stricken shopkeepers put their shutters down and traffic also was disrupted. It is also alleged in Annexure No. 3 to the writ petition that Umesh Maheshwari @ Umesh Pahalwan has following criminal history to his account:

i) He (Umesh Maheshwari @ Umesh Pahalwan) was involved in a robbery committed on 25.08.1990 (crime No. 626 / 90 u/s 394 / 304 of I.P.C., P.S. Kashipur). However, for the want of evidence, a final report was submitted in said crime.

ii) He (Umesh Maheshwari @ Umesh Pahalwan) was involved in crime No. 762 / 90 u/s 307 of I.P.C., P.S. Kashipur, relating to the incident dated 22.10.1990, at about 2:30 P.M., in which after accepting Rs. 20,000/- from a landlord to get his house vacated, the tenant's son was stabbed. However, the accused was acquitted in said case as the witnesses did not date to adduce evidence against him.

iii) He (Umesh Maheshwari @ Umesh Pahalwan) was involved in crime No. 695 / 91 u/s 302 of I.P.C., P.S. Kashipur, which relates to the incident dated 08.07.1991 in which one Naseem was murdered.

iv) He (Umesh Maheshwari @ Umesh Pahalwan) was involved in crime No. 1065 / 91 u/s 302 of I.P.C.,

P.S. Kashipur, in which on 12.10.1991, he committed murder of one Shiv Raj Singh. However, witnesses did not date to adduce evidence against the petitioner and he was acquitted of the charge.

v) He (Umesh Maheshwari @ Umesh Pahalwan) was booked on 29.05.1993 in crime No. 614 / 93 u/s 2 /3 of U.P. Gangsters Act.

vi) He (Umesh Maheshwari @ Umesh Pahalwan) was involved in crime No. 112 / 94 u/s 307 of I.P.C., P.S. Kashipur, which relates to the incident dated 27.02.1994, in which an attempt to commit murder was made on one Dharam Pal Singh.

vii) He (Umesh Maheshwari @ Umesh Pahalwan) was involved in crime No. 7 / 95 u/s 323 / 506 of I.P.C., P.S. Kashipur, which relates to the incident dated 05.01.1995.

viii) He (Umesh Maheshwari @ Umesh Pahalwan) along with others was involved in crime No. 33 / 95 u/s 147 / 307 of I.P.C., P.S. Kashipur, which relates to the incident dated 13.01.1995, in which petitioner with his associates made an attempt to commit murder of one Sanjay Sharma and his brother.

ix) He (Umesh Maheshwari @ Umesh Pahalwan) was involved in crime No. 534 / 95 u/s 307 of I.P.C., and crime No. 535 u/s 4 / 25 of the Arms Act, P.S. Kashipur, which relates to the incident dated 14.06.1995, in which attempt to commit murder with a knife was made on a police party.

x) He (Umesh Maheshwari @ Umesh Pahalwan) along with his associates was involved in crime No. 234 / 96 u/s 147 / 148 / 149 / 452/ 307/ 504 / 506 of I.P.C., P.S. Kashipur, which relates to the incident dated 18.02.1996, in which one Surjeet Singh was injured with a firearm.

xi) He (Umesh Maheshwari @ Umesh Pahalwan) was involved in crime No. 561 / 95 u/s 307 of I.P.C., and crime No. 562 / 65 u/s 24 of the Arms Act, P.S. Kashipur, which relates to the incident dated 20.06.1995, in which attempt to commit murder against members of police party was made and the firearm was recovered from the possession of the accused.

xii) He (Umesh Maheshwari @ Umesh Pahalwan) was booked in crime No. 689 / 95 u/s 3 / 4 of the U.P. Gunda Act, on 14.07.1995.

xiii) He (Umesh Maheshwari @ Umesh Pahalwan) was involved in crime No. 708 / 95 u/s 307 of I.P.C., P.S. Kashipur, which relates to the incident dated 14.07.1995, in which petitioner with his associates made attempt to commit murder against a police officer Sri J.P. Naithani.

xiv) He (Umesh Maheshwari @ Umesh Pahalwan) was booked on 17.07.1995 in crime No. 710 / 95 u/s 2 / 3 of U.P. Gangsters Act.

xv) He (Umesh Maheshwari @ Umesh Pahalwan) was involved in crime No. 234 / 96 u/s 147 / 148 / 149 / 452 / 307 / 504 / 506 of I.P.C., P.S. Kashipur, which relates to the incident dated 10.02.1996, in

which petitioner along with some other persons committed attempt to murder of Surjeet Singh and members of his family.

xvi) He (Umesh Maheshwari @ Umesh Pahalwan) was involved in crime No. 133 / 97 u/s 302 / 120-B of I.P.C., P.S. Ramnagar, which relates to the incident dated 29.04.1997, in which one Deep Raj Sharma was murdered.

xvii) He (Umesh Maheshwari @ Umesh Pahalwan) was booked on 06.05.1997 in crime No. 332 / 97 u/s 3 / 4 of U.P. Gunda Act.

xviii) He was involved in crime No. 357 / 97 u/s 452 / 323 / 506 / 427 of I.P.C., P.S. Kashipur, which relates to the incident dated 21.05.1997, in which petitioner along with his associates committed 'maar peet' with one Dr. Mathur.

xix) He (Umesh Maheshwari @ Umesh Pahalwan) was involved along with his associates in crime No. 376 / 97 u/s 147 / 148 / 149 / 323 / 307 / 376 / 452 / 506 of I.P.C., P.S. Kashipur, in which on the intervening night of 1st and 2nd of June, 1997, informant's wife and daughters were gang raped by the accused persons.

xx) He (Umesh Maheshwari @ Umesh Pahalwan) was involved in crime No. 655 / 98 u/s 307 / 398 of I.P.C., which relates to the incident dated 20.07.1998, in which the accused persons attacked the police party on patrol duty and made attempt to commit murder and robbery.

xxi) He (Umesh Maheshwari @ Umesh Pahalwan) along with other persons was involved in crime No. 701 / 98 u/s 147 / 342 / 353 / 504 / 506 of I.P.C., P.S. Kashipur, which relates to the incident dated 01.08.1998.

xxii) He (Umesh Maheshwari @ Umesh Pahalwan) raised a gang of criminals and he was booked on 11.10.1998 in crime No. 1919 / 98 u/s 2 / 3 of the U.P. Gangster Act.

xxiii) He (Umesh Maheshwari @ Umesh Pahalwan) was arrested with 22 packs of smack on 19.07.1999 and a crime No. 720 / 99 u/s 18 / 21 of the Narcotics Drugs and Psychortopic Substances Act at P.S. Kashipur was registered against him.

xxiv) On 06.10.2002, he (Umesh Maheshwari @ Umesh Pahalwan) was booked in crime No. 129 / 2002 u/s 2 / 3 of U.P. Gangster Act; and

xxv) He (Umesh Maheshwari @ Umesh Pahalwan) was involved in crime No. 146 / 2003 u/s 506 of I.P.C. and u/s 3(1)(X) of Scheduled Casts and Scheduled Tribes Prevention of Atrocities Act, 1989, which relates to the incident dated 15.02.2003, in which some Municipal employees was insulted and intimidated.

8) Annexure No. 3 to the Habeas Corpus Writ Petition No. 14 of 2005, shows that apart from the involvement of Gurumukh Singh @ Gorkha in crime No. 1565 of 2005 under Section 302 / 34 of I.P.C. registered at P.S. Kashipur in which Manoj Chaudhary, Vice Chairman of Nagar

Palika Parishad, Kashipur was allegedly murdered by him (with his associate Umesh Pahalwan), he (Gurumukh Singh @ Gorkha) has following criminal history:

i) He (Gurumukh Sing @ Gorkha) was involved in crime No. 445 / 97 u/s 307 / 506 of I.P.C., which relates to the incident dated 22.06.1997, in which an attempt to commit murder of one Shakeel was made by him.

ii) He (Gurumukh Singh @ Gorkha) was involved in crime No. 829 / 97 u/s 302 of I.P.C., P.S. Kashipur, which relates to the incident dated 29.11.1997, in which one Yogendra Nath Gupta was murdered.

iii) He (Gurumukh Singh @ Gorkha) was involved in crime No. 400 / 98 u/s 452 / 323 / 504 / 506 of I.P.C., which relates to the incident dated 24.05.1998, in which informant Parminder Singh was insulted and intimidated.

iv) He (Gurumukh Singh @ Gorkha) has a gang of criminals. He was booked on 31.05.1998 in crime No. 754 / 98 u/s 2 / 3 of the U.P. Gangsters Act.

v) He (Gurumukh Singh @ Gorkha) was involved in crime No. 221/ 99 u/s 364 of I.P.C., P.S. Kashipur, which relates to the incident dated 06.04.1999, in which one Ankur Gupta was kidnapped.

vi) He (Gurumukh Singh @ Gorkha) was involved in crime No. 157 / 99 u/s 302 / 307 of I.P.C., P.S. Kashipur, which relates to the incident dated

09.04.1997, in which one Sunil Bali was murdered.

vii) He (Gurumukh Singh @ Gorkha) was involved in crime No. 1068 /2001 u/s 302 / 307 of I.P.C., P.S. Kashipur, relating to the incident dated 01.10.2001, in which he along with his two associates committed murder on one Dr. Umesh Chandra and one more person and injured others.

viii) On 01.11.2000, an unlicensed firearm was recovered from him and the petitioner was challaned under Section 25 of the Arms Act; and

ix) He (Gurumukh Singh @ Gorkha) along with his associates was involved in crime No. 28 / 2004 u/s 147 / 148 / 149 / 302 / 307 of I.P.C., P.S. Jaspur, which relates to the incident dated 01.02.2004, in which to take illegal possession of land, the petitioner committed murder of one Mast Ram and Karamjeet Singh.

9) During the arguments it is conceded by learned Government Advocate that in most of the aforesaid crimes the petitioners have been acquitted. Mr. S.K. Aggarwal, senior counsel, appearing on behalf of the petitioners in both the cases, argued that the detention orders are passed on the basis of stale cases in which the petitioners have not been found guilty and it is further argued that the impugned detention orders are bad in law. The principle of law

contained in ***Suraj Pal Sahu Vs. State of Maharashtra reported in A.I.R. 1996 SUPREME COURT 2177,*** shows that simply because a man is discharged in criminal cases is not sufficient to discard the ground mentioned in the preventive detention order provided there is no unexplained interval between offending acts and the order of detention. In the present case, the aforesaid chain of criminal cases for a long period do constitute a ground for satisfaction of the authority concerned to come to the conclusion that the petitioners have created a situation where there exists terror in the public. Section 5-A of the National Security Act, 1980 provides that where a person has been detained in pursuance of a detention order passed under Section 3 of said Act on two or more grounds, such order or detention shall be deemed to have been made separately on each of such grounds and the order shall not be deemed to be invalid merely that some of the grounds are vague or non-existent or invalid or irrelevant. The petitioners are not acquitted of all the cases and the most recent one i.e. crime No. 1565 of 2005 under Section 302 of I.P.C., registered at P.S. Kashipur, is still pending in which, it is a alleged by respondent No. 2, that the public of Kashipur are so much terror stricken that the shutters were put down by the shopkeepers and the traffic came to a halt there.

10) Mr. S.K. Aggarwal, senior counsel appearing on behalf of both the petitioners drew attention of this Court to the principle of law laid down in ***Om Prakash Vs. Commissioner of Police and others reported in A.I.R. 1990***

SUPREME COURT 496; Dharamdas Shamla Agarwal Vs. The Police Commissioner and another reported in A.I.R. 1989 SUPREME COURT 1282 and ***Chowdarapu Raghunandan Vs. State of Tamil Nadu and others reported in A.I.R. 2002 SUPREME COURT 1460,*** and contended that there is difference between the ***'law and order'*** and ***'public order'***. We have gone through said laws. None of these cases relate to the National Security Act, 1980 and it is not clear if there is any parallel provision like Section 5-A of the Act No. 65 of 1980, in the Gujarat Prevention of Anti-Social Activities Act, 1985 or Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. In ***State of U.P. and another Vs. Sanjai Pratap Gupta and others reported in 2005 Supreme Court Cases (Crl) 366,*** the expression ***'public order', 'law and other'*** and ***'security of State'*** and explained in which it has been held that it is not the number of acts which matters but the magnitude and other circumstances of the crime which may create terror in the public. In the present case, not only number of cases are high against the petitioners but also magnitude too is large. Therefore, material placed before the respondent No. 2 which is mentioned above, cannot be said to be invalid or irrelevant or vague.

11) For the reasons, as discussed above, in our opinion, impugned orders cannot be said to be without valid reasons or passed with sufficient ground, as required under Section 3 of the National Security Act, 1980. Therefore, in our opinion, both the Habeas Corpus Writ Petitions are liable to be dismissed and are accordingly, dismissed.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. June 20, 2006.

H.Negi